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Legal & Regulatory Group

June 1, 2015

SUBMITTED ELECTRONICALLY

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, N.W.,
Suite CC-5610 (Annex J)
Washington, D.C. 20580
Electronic address: <https://ftcpublic.commentworks.com/ftc/RegsBEMZpra>

Re: “Regs BEMZ, PRA Comments, P084812”

The National Automobile Dealers Association (“NADA”) represents more than 16,000 new car and truck dealers, both domestic and import, with more than 32,500 separate franchises and nearly one million employees nationwide. NADA is submitting these supplemental comments in response to the FTC’s request for comments on its proposal (“Proposal”) to extend through June 30, 2018 the current PRA clearances for information collection requirements contained in four consumer financial regulations – Regulations B, E, M, and Z -- enforced by the Commission (“Request for Comments”).

NADA is particularly focused on the regulatory burden imposed by the FTC and other federal agencies that promulgate or enforce regulatory requirements affecting our members. Because NADA’s automobile and truck dealer members routinely conduct lease or finance advertising and assist consumers in arranging financing for the purchase of new and used vehicles, NADA members face recordkeeping, disclosure, and other related compliance requirements under some or of all of the regulations at issue in this Request for Comments -- in particular Regulations B, M, and Z.

The Proposal Underestimates the True Burden

While Commission staff have worked hard at the very difficult task of compiling estimates of the burden related to these regulations, we believe that the Proposal continues to severely underestimate the true burden that automobile dealers face as a result of these regulations.

We note that many of the estimates in the Proposal are similar to the estimates included in 2012, when the Commission last sought PRA clearance for these regulations. As a result, we would like to largely reiterate many of the points made in comments NADA submitted in 2012 in response to the then-pending FTC request for PRA clearance regarding Regs B, M, E, and Z. (“2012 Comments”). Our 2012 comments generally detailed why, in our view, the cost and burden estimates underestimated the true burden of the relevant regulations on automobile dealers. The same holds true with respect to this Proposal, and while we appreciate and acknowledge the Commission’s efforts to expand the burden estimate in some cases, we believe the Proposal continues to underestimate the true burden, and in many ways to an even greater degree than in 2012.

By way of example, we look to the estimates under Regulation Z for Closed-end Credit Advertising. In 2012, the estimated burden total of 480,480 transactions assumed an average of two transactions per respondent, with an average burden per transaction of one (1) minute.¹ As we noted at the time, automobile dealers advertise hundreds, if not thousands of vehicles per year in print, on television, radio, and on numerous websites and other electronic media. Many of those advertisements are subject to Reg Z, and as a result, the average estimate of two transactions per year is vastly understated for motor vehicle dealers. That reality has not changed since 2012, and indeed the true numbers have continued to increase with the increase in online advertising. The current Proposal does appear to have amended the estimated number of transactions to ten (10) transactions per respondent, but at the same time it retains the estimated one (1) minute transaction time. While we agree that an increase in the estimated burden is appropriate, we disagree that the revised estimates are adequate, either in number or time needed.

Similarly, for Reg M advertising compliance, the Proposal estimates approximately 40 lease advertising transactions per year, but retains the same estimated 15 *seconds* per lease advertisement compliance burden that appeared in 2012. Needless to say, we believe that the estimates for this obligation are far below reality – both in number of transactions and in time required.

If anything, the compliance burden for dealers under Regs M and Z has increased since 2012. In the last several years, the Commission has reportedly brought hundreds of compliance actions against automobile dealers, with many involving alleged violations of Reg Z and M advertising requirements – many of which allegedly occurred in online advertisements. If anything, this rash of enforcement activity has increased the time and care required to comply and has greatly increased the accompanying expense. Many dealers who did not historically engage professional help in the past have begun to do so, due to the increasing complexity of the issue, as well as the volume of material requiring review. The costs associated with this professional and legal assistance are substantial, and while they do not appear to be reflected in the Proposal, they should be.

NADA issued a revised Advertising Guide for dealers earlier this year that outlined many of the dozens of considerations and numerous scenarios that dealers must navigate when complying with the Reg Z and Reg M advertising requirements. It is difficult to understand how a dealer could adequately review any advertisement for Reg Z compliance in sixty seconds, and we

¹ See 77 Fed Reg. 6120.

believe it is impossible for any dealer to review a lease advertisement in 15 seconds. We believe that the Commission's own enforcement staff would be unlikely to recommend such limited attention to dealers' compliance duties.

Again, this is just one example of a number of such understated estimates in the Proposal for Regs M and Z as well as Reg B.

NADA's 2012 Survey and Recent Studies Shed Light on the True Burden

NADA's 2012 comments also detailed results of a 2012 NADA member survey about the regulatory burden associated with these regulations. Those comments are submitted hereto (under separate cover) as Exhibit A. That survey pointed to three main conclusions:

(1) The total compliance hours reported by dealers vastly exceed the estimates in the Proposal.

(2) The total cost of those hours exceeds the estimates in the Proposal, because compliance is handled mostly by Managerial staff.

(3) Dealers incur substantial "other" costs of compliance, not currently reflected in the Proposal.

While we have not had the opportunity to update that survey, we believe that if anything, the burden has increased since 2012. One additional example of that is in connection with the Adverse Action notice requirements under Reg B. The Commission has taken the position that where a finance source involved in the three-party lending transaction has obtained a credit report, dealers are deemed to have "used" a credit report for the purposes of providing an Adverse Action notice, even if they never obtained a credit report themselves.² What this means is that dealers in many cases must now purchase a credit report (where they would not have before) simply in order to provide the required credit score disclosures in the Adverse Action notice. This recent change has resulted in the added cost of the reports themselves, the significant costs of handling that sensitive customer data, and the storage and records retention costs connected with those sensitive consumer reports. These costs are not included in the survey results, and do not appear to be included in the Proposal. We urge the Commission to review the results of that survey and amend the Proposal in light of the survey and these and other current conditions.

We also note that just last year, the Center for Automotive Research (CAR) issued a report ("CAR Report") that largely supports the results of the survey. The CAR Report, entitled "THE IMPACT OF FEDERAL REGULATIONS ON FRANCHISED AUTOMOBILE DEALERSHIPS," (submitted under separate cover as Exhibit B) analyzes and estimates the costs incurred by automobile dealers to comply with a subset of the federal regulations applicable to their operations³ and finds (among other things) that:

² The same is true for credit score disclosure notices provided to consumers under the Risk Based Pricing Rule.

³ While the CAR Report looks at many regulations in addition to Regs B, M., and Z, (it examined costs of complying with 61 federal regulations), those three regulations represent a material portion of dealers' regulatory obligations.

- It cost the average dealership \$182,754 to comply with federal mandates governing employment, business operations, vehicle financing, sales, marketing and vehicle repair and maintenance.
- Those regulatory costs equated to 21.7% of the average dealership's pretax, net profits, or about \$2,400 per dealership employee.
- The overall impact of these costs on the 2012 U.S. economy is an estimated \$10.5 billion in lost economic output.
- Every \$1 increase in a dealership's regulatory-compliance costs results in \$3.28 in lost output in the U.S economy and a net loss of 44 cents to the U.S. Department of the Treasury.

We hope that the Commission and any others who consider the burden on dealers by Regs B, M, and Z will do so not simply standing alone, but also in the context of the overall regulatory burden faced by dealers.

We believe that the estimates in the Proposal underestimate the true burden on dealers for many other reasons as well. Many dealers are small businesses that do not benefit from sophisticated records retention or computer systems, and cannot leverage robust compliance structures. Even larger dealer groups often do not have the economy of scale necessary to justify in-house legal counsel, compliance staff, or other expert or technical resources. As a result, they rely heavily on outside counsel, consultants, and computer and other experts to help them to comply with their regulatory obligations – and pay the concomitant fees associated with those third party services.

In addition, even the daily compliance burdens at a dealership often must be handled by managerial, not clerical staff. For example, it is dealer managers (often in conjunction with outside lawyer or other compliance professionals), not clerical staff, who review advertisements for Reg Z or Reg M compliance. It is also dealership managerial staff who oversee vehicle sale and lease negotiations and thus are often responsible for Reg Z and Reg M transactional compliance, or interact with consumers seeking credit approval and thus are often responsible for ensuring that adverse action notices pursuant to Reg B are properly completed, sent, and tracked.⁴

NADA continues to hear from dealers who are very concerned about the overall regulatory and paperwork burden they face,⁵ and dealers hear every day from their customers about the negative effect this burden has on their experience. Indeed, one important way that we believe the Proposal underestimates the burdens of these regulations is by ignoring the burden they impose on consumers. Consumers and dealers alike are seeking to streamline the vehicle

⁴ Indeed, in many dealerships, unlike larger financial institutions, there simply are no “skilled technical”-level personnel, and therefore compliance tasks tend to fall more heavily on managerial staff.

⁵ Earl Hesterberg, CEO of Group 1 Automotive noted that vehicle purchase paperwork may require “up to 56 signatures, and 9 initials,” and that Group 1 Automotive sends out over 9,000 adverse action notices each month. See http://www.autonews.com/article/20120111/FINANCE_AND_INSURANCE/120119949/1142. (Note that Group 1 had at that time approximately 95 dealership locations (source: Group 1 2010 10-K), which means that Group 1 sends an average of approximately 1,137 adverse action notices per dealership, per year, a figure that is relatively consistent with the numbers reported in the survey results in Exhibit A.)

purchase process⁶ and these regulatory requirements stand in the way of dealers being able to meet consumer expectations.

Conclusion

NADA sincerely hopes that these comments are received in the manner they are intended – to aid the Commission and others in making accurate burden assessments relative to these federal regulations. We would like to again highlight the growing concern that not only these regulations raise for dealers and their consumers, but the cumulative effect of federal, state and local regulation. We understand the difficulty of the task facing the Commission in setting these estimates, and hope that this can help in that process. Thank you again for this opportunity to comment, and your consideration of this data and these comments. Please feel free to contact us if you have any questions.

Sincerely,

/s/

Bradley T. Miller

Legal and Regulatory Affairs

⁶ See, e.g., <http://www.autonews.com/article/20140616/RETAIL07/306169981/the-elusive-60-minute-transaction>; <http://wardsauto.com/blog/let-s-rate-60-minute-car-deal>

EXHIBIT A

2012 NADA COMMENTS and Survey

(Attached under separate cover)

EXHIBIT B

Center for Automotive Research Study:

**“THE IMPACT OF FEDERAL REGULATIONS ON FRANCHISED
AUTOMOBILE DEALERSHIPS.”**

(Attached under separate cover)